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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.   |
|--|-------------|----------------------|---------------------|--------------------|
| 09/834,208   | 04/13/2001  | G. Thomas Wolf       |                     | 3950               |
| 42082  | 7590        | 08/25/2005           | EXAMINER            |                    |
| CONWELL LLC<br>130 LUBRANO DRIVE, SUITE 112<br>ANNAPOLIS, MD 21401 |             |                      |                     | MENDOZA, MICHAEL G |
|  |             | ART UNIT             |                     | PAPER NUMBER       |
|  |             | 3731                 |                     |                    |

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                |                  |
|------------------------------|--------------------------------|------------------|
| <b>Office Action Summary</b> | Application No.                | Applicant(s)     |
|                              | 09/834,208                     | WOLF, G. THOMAS  |
|                              | Examiner<br>Michael G. Mendoza | Art Unit<br>3731 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 June 2005.

2a) This action is **FINAL**.                                   2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 5-10 and 12-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 5-10 and 12-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

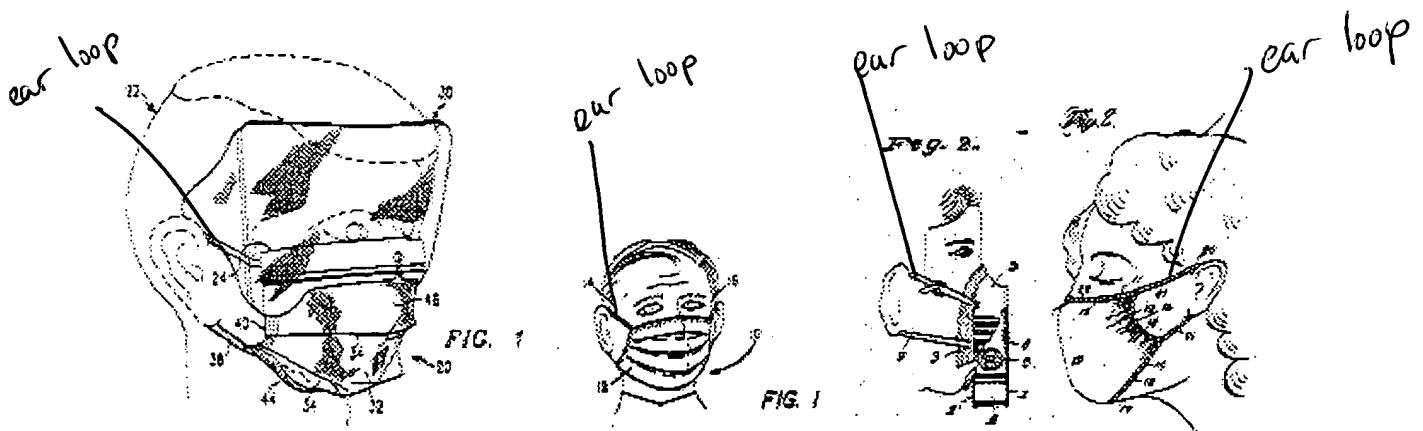
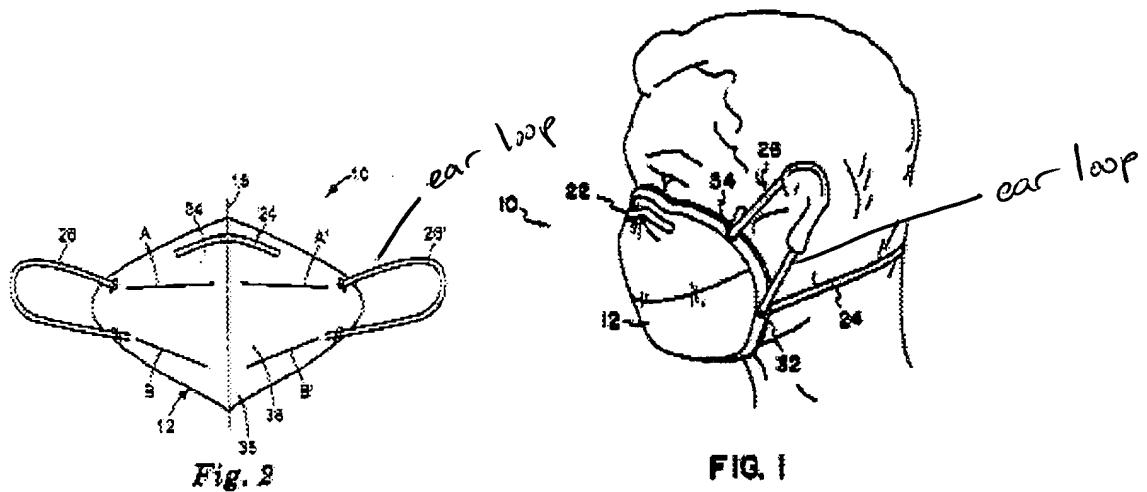
1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

## ***Response to Arguments***

1. Applicant's arguments filed 29 June 2005 have been fully considered but they are not persuasive.
2. The Applicant argues the references stated as evidence does not cure the deficiency of ear loops. The references stated shows that is it very well known in the art of facial masks to use ear loops to secure a mask to the face of a user as opposed to a strap that wraps around the back of the user's head.



3. Patents 5701892 and 5819731 supply motivation for having ear loops as opposed to have a strap wrap around the back of a user's head. The straps of Hudson are adjustable.

4. The Applicant argues that the Examiner's concerns have not been articulated. The rejections stated that duplication of parts required only routine skill in the art. The Hudson reference teaches one point of attachment on each side of the mask. Duplication of another point of attachment would require only routine skill in the art. The ear loop of Hudson using one point of attachment as in the rejection of claim 5 would look similar to Patent 6079980.

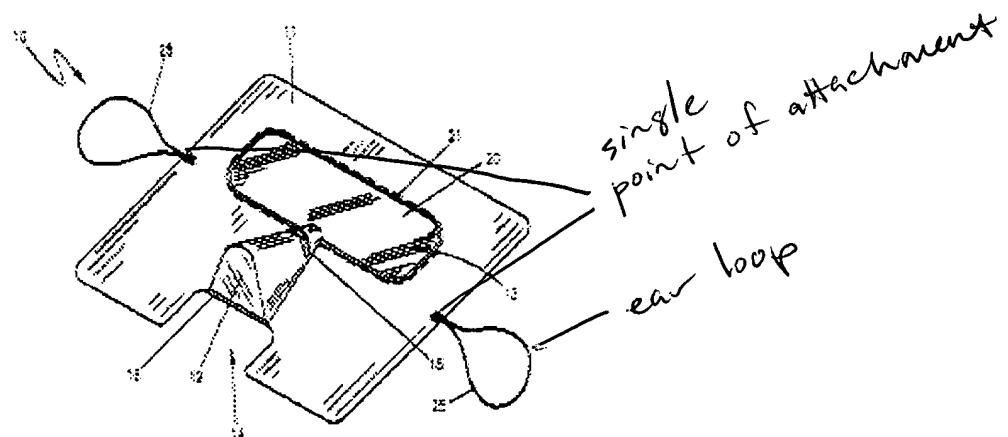
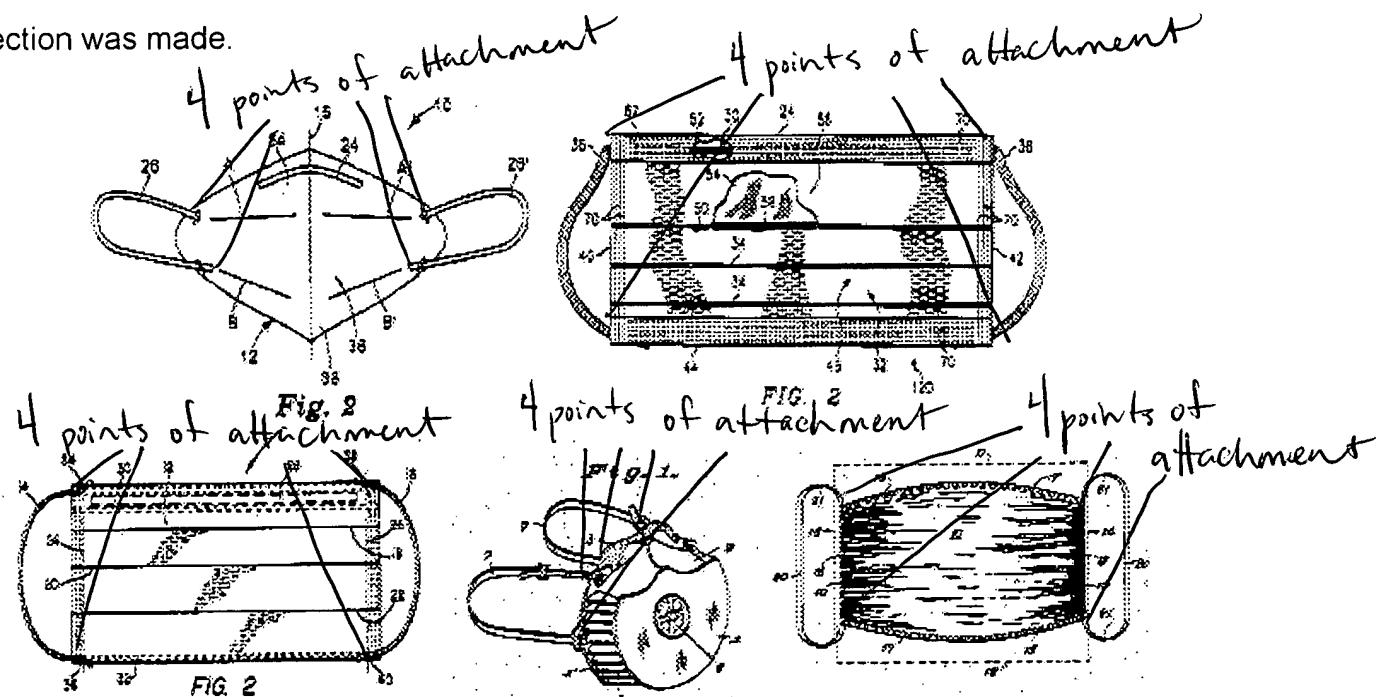


Figure 1

5. As stated in the rejections 6 and 9, it is well known in the art of mask to secure a mask using four points of attachment when using ear loops as evidenced by Patent 2494406, 2798483, 4802473, 4941470, 5701892, 5813398, and 6394090. Duplication of the points of attachment would look similar to the above stated references and is well

known in the art to use the four points of attachment as opposed to the single attachment as shown above in Patent 6079980.

6. The Applicant also argues that Patents 4098271 and 4865027 do not support the statement of "duplicating essential working parts of a device." The Patents are not relied upon for the rejection of claims 2, 6, and 9 wherein the "duplication of parts" rejection was made.



7. The Applicant argues that Patents 4098271 and 4865027 do not cure the deficiencies of Hudson. The Applicant also argues that the Examiner's concerns have not been articulated. The deficiencies concerning the ear loops and attachment points have already been met as stated in above sections 2-6. As stated in the previous rejection Hudson fails to specifically teach the use of a flap valve. The use of a flap valve on an exhaust/exhalation port is well known as evidenced by Patents 4098271

and 4865027. Without a valve on the exhaust/exhalation port air from the atmosphere would enter the mask as stated in the rejection to claims 11-13.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 5-10, 12-13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson 2843121.

10. As to claims 5, 7, 8, and 10, Hudson teaches an oxygen mask 10 having a means for being secured over the nose and mouth of a patient comprising: an elastic band, points of attachment 15 on both sides of the mask, and the elastic band securable to the patient by pulling the ends anteriorally through the points of attachment (col. 2, lines 27-31). It should be noted that Hudson fails to teach a pair of bands extendible to loop over and around each ear of the patient. However, it is well known in the art of masks to secure a mask using loops around a user's ears as an alternative to having a strap/band around the user's head as evidenced in U.S. patents 2494406, 2798483, 4802473, 4941470, 5701892, 5813398, 5819731, 6079980, 6095143, and 6394090. Therefore it would have been obvious for one having ordinary skill in the art at the time the invention was made to use ear loops as alternative means of securing a mask. Furthermore, it is well known in the art of masks to secure a mask using loops around a

user's ears to prevent entanglement of the user's hair as evidenced by 5701892 (col. 2, lines 32-33) and 5819731 (col. 1, lines 23-29).

11. As to claim 2, 6, and 9 are Hudson disclosed the claimed invention except for four separate points attachment. It would have been obvious to one having ordinary skill in the art at the time the invention was made have four separate points of attachment, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Furthermore, it is well known in the art of masks to secure a mask using four points of attachment when using ear loops as evidenced by U.S. patents 2494406, 2798483, 4802473, 4941470, 5701892, 5813398, and 6394090.

12. As to claims 11-13, Hudson fails to specifically teach the use of a flap valve. However, it is well known in the art of oxygen masks to have an exhalation port with a valve to allow exhaled air to be forced out to the atmosphere and not allow air from the atmosphere into the mask as evidenced by 4098271 and 4865027.

13. As to claim 14, Hudson teaches an oxygen mask for use on a patient, the oxygen mask comprising: a face mask molded from plastic comprising a larger part of the mask defined by a face-conforming periphery, a rim with an enlargement configured to substantially conform to the contour of the nose bridge of the patient; a first side portion and an opposite second side portion configured to substantially conform to contour of the face of the patient, and a lower portion configured to substantially conform to contour of the face of the patient below the mouth so as to form a breathing chamber about the mouth and nostrils of the patient (see figures). It should be noted that Hudson

fails to teach a pair of bands extendible to loop over and around each ear of the patient. However, it is well known in the art of masks to secure a mask using loops around a user's ears as an alternative to having a strap/band around the user's head as evidenced in U.S. patents 2494406, 2798483, 4802473, 4941470, 5701892, 5813398, 5819731, 6079980, 6095143, and 6394090. Therefore it would have been obvious for one having ordinary skill in the art at the time the invention was made to use ear loops as alternative means of securing a mask. Furthermore, it is well known in the art of masks to secure a mask using loops around a user's ears to prevent entanglement of the user's hair as evidenced by 5701892 (col. 2, lines 32-33) and 5819731 (col. 1, lines 23-29). It should be noted Hudson disclosed the claimed invention except for four separate points attachment. It would have been obvious to one having ordinary skill in the art at the time the invention was made have four separate points of attachment, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Furthermore, it is well known in the art of masks to secure a mask using four points of attachment when using ear loops as evidenced by U.S. patents 2494406, 2798483, 4802473, 4941470, 5701892, 5813398, and 6394090.

14. As to claim 15, Hudson teaches the oxygen mask of claim 14, teaches wherein both ends of the straps is adjustably connected to the face mask (col. 2, lines 20-31).

15. As to claim 17, Hudson teaches the oxygen mask of claim 14, which additionally comprises an adapter plug 23.

16. As to claim 18, Hudson teaches the oxygen mask of claim 14, wherein the mask comprises a nose piece with two exhalation ports 20. Hudson fails to specifically teach the use of a flap valve. However, it is well known in the art of oxygen masks to have an exhalation port with a valve to allow exhaled air to be forced out to the atmosphere and not allow air from the atmosphere into the mask as evidenced by 4098271 and 4865027.

17. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson in view of Dyrud et al. 5819731.

18. Hudson teaches the oxygen mask of claim 14. It should be noted that Hudson fails to teach wherein one end of each of the straps is adjustable connected to the face mask, and the second end of the strap is permanently attached. Dyrud et al. teaches a mask with a common one end of each of strap is adjustable connected to a face mask, and the second end of each strap is permanently attached. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the fasterner 34 to fixedly attach the straps to prevent loss of the straps.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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8/26/05